S.B. Civil Writ Petition No.9532/05

Kanhaiya Lal

Vs.

Central Govt. Industrial-Cum-Labour Court

Date of Order : 25/04/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Arun Sharma, for petitioner
Mr. V.S. Yadav, for respondent No.2

Notices were issued by this court on 13th December, 2005 as to why the writ petition may not be finally heard and disposed of at the admission stage. After service of notice, counsel appeared for respondent No.2, but no reply to the writ petition has been filed despite opportunity afforded to them.

Instant petition has been filed against the order dt.23rd November, 2005 [Ann.4] whereby the application filed by the petitioner-workman seeking impleadment of Local Implementation Committee [“LIC”] as party to the dispute for its adjudication, has been rejected by the Central Government Industrial Tribunal vide order dt.23rd November, 2005 [Ann.4]. Hence, this petition.

The petitioner-workman, as alleged in the petition, was initially appointed as Messenger on 1st June, 1991 and his services were terminated by verbal order w.e.f. 1st September, 2003, which was questioned by submitting

application before the conciliation officer and the dispute was finally referred by the appropriate government for adjudication vide order dt.15th March, 2005. The extract of the reference made by the appropriate government in its order dt.15th March, 2005 is reproduced as under:

> "Whether the workman Shri Kanhiya Lal Meghwal was in continuous service of the Bank from 1/6/91 to 31/8/2003. If yes, whether the action of terminating the services of the workman by the Branch Manager, State Bank of India, Atru, Distt.-Baran (Raj.) w.e.f. 1/09/2003 is legal and justified? If not, to what relief the claimant is entitled to and from which date?"

After the statement of claim was filed by the petitioner-workman, the respondent No.2 submitted their written statement and raised objection that the workman was engaged by the LIC, as such there is no relationship between the petitioner-workman and the respondent No.2, as such no relief against impleaded respondent could be claimed by the workman. Immediately thereafter, the petitioner submitted application seeking impleadment of Local Implementation Committee as party respondent before the Tribunal for the reason that only by its impleadment, onus will lie upon the Bank to show as to whether the petitioner was engaged by LIC or through some agency by the Bank. The application filed by the petitioner-workman was rejected vide order impugned dt.23rd November, 2005 [Ann.4].

Counsel submits that once there is an objection raised by the respondent before the Tribunal, who is a party to the reference, about his engagement by LIC as a canteen boy, it became necessary to implead LIC as respondent for proper adjudication of the dispute. As such, the finding recorded in the order impugned Ann.4 by the learned Tribunal is totally perverse and is not legally sustainable, requires interference by this court.

Counsel for respondent has supported the finding recorded by the learned Tribunal and submits that the present writ petition has no merit and deserves rejection.

I have considered the submission made by the counsel and also perused the material on record.

The fact which has come on record that petitioner worked from 1st June, 1991 to 31st August, 2003 and whether engagement of the petitioner as a canteen boy by the LIC or employed by the Bank directly or through some agency, is a question of fact, which could be examined only after the LIC is impleaded as party respondent for proper adjudication of the dispute.

In my opinion, in the instant case, LIC certainly was a necessary party for proper adjudication of the dispute and the finding recorded by the learned Tribunal is not legally sustainable and deserves to be set aside.

Consequently, the writ petition is allowed. The order impugned dt.23rd November, 2005 [Ann.4] is quashed and set aside. The Local Implementation Committee is directed to be impleaded as party respondent to the dispute. The Tribunal is directed to proceed further and decide the dispute expeditiously in accordance with law.

[Ajay Rastogi],J.

FRB